

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-308-T - ORDER NO. 2001-221

MARCH 12, 2001

IN RE: Application of Phillip E. Boris d/b/a)	
Allegiance Moving Company, 400 Pinewood)	
Drive, Apt. B-6, Summerville, SC 29483)	
(Mailing address: 507 Stinson Drive, Unit G-)	ORDER DENYING
6, Charleston, SC 29407) for a Class E)	APPLICATION
Certificate of Public Convenience and)	
Necessity .)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Phillip E. Boris DBA Allegiance Moving Company (Allegiance, Boris or the Company), 400 Pinewood Drive, Apt. B-6, Summerville, SC 29483 for a Class E Certificate of Public Convenience and Necessity to transport household goods as defined in R. 103-210(1) between points and places in South Carolina. This scope was subsequently amended downward to between points and places in Charleston, Berkeley, and Dorchester Counties. Because of the reasoning stated below, the Application must be denied.

The Commission's Executive Director instructed Allegiance to publish a Notice of Filing in newspapers of general circulation in the areas desired. The Notice of Filing instructed the public as to how to file pleadings to participate in the proceeding on the Application. Petitions to Intervene were received from Carey Moving & Storage, Inc., Carey Moving & Storage of Greenville, Inc., Arrow Moving & Storage, Inc., Dale J. Cook Moving & Storage, Inc. and Albert H. Kohler DBA Kohler Movers.

A hearing was held on the application on February 7, 2001 at 10:30 AM in the Commission's hearing room, with the Honorable William Saunders, Chairman, presiding. David Popowski, Esquire, represented Allegiance. T. Anthony Cook was present on behalf of Dale J. Cook Moving & Storage Company. Albert Kohler was present on behalf of Kohler Movers. The remaining intervenors did not appear at the hearing. F. David Butler, General Counsel represented the Commission Staff.

Allegiance presented the testimony of Phillip E. Boris. T. Anthony Cook and Albert Kohler presented testimony on behalf of Dale J. Cook Moving & Storage, Inc. and Kohler Movers, respectively. The Commission Staff presented the testimony of George Parker, Rod Andrew, and C.H. Hinson.

Phillip E. Boris testified on behalf of the Company. Boris noted that his grandparents had a moving company in New York State, and that he had worked in the past with a number of movers, including Two Men and a Truck, Kohler Movers, Dale J. Cook Moving & Storage, Inc., United Van Lines and North American Global. Boris testified that his experience has been great in the moving business, accordingly. Boris also acknowledged that he pled guilty in Court to the charge of moving household goods without authority. Boris noted that he would lease equipment as necessary. Boris further noted, among other things, that there were new apartments under construction in the area of requested authority, and that the populations of Charleston and South Carolina in general were growing. Accordingly, Boris stated that there would be an increased demand for movers.

Anthony Cook testified for Dale J. Cook Moving & Storage, Inc. Cook expressed the view that there is not a need for another mover in the Charleston area, and that his revenues had decreased this year to a great degree. Albert Kohler testified that the public convenience and necessity does not demand another mover for at least seven months out of the year.

George Parker, the manager of the Commission's Transportation Department, testified as to the substance of a complaint from the Andrew family. Boris had moved the family illegally from Charleston to Clemson. The other difficulty was that Boris underestimated the charge for the move. At the beginning, Boris estimated that the move would cost \$1500. However, at the time of the move, Boris informed the Andrews that it would cost \$3,000 for the move, and that he wanted the money before he finished unloading the truck. The Andrews paid him the increased amount, but then filed a complaint with the Commission over the move. Rod Andrew testified as to certain details of the move. Officer C.H. Hinson testified as to his dealings with Boris over several months.

S.C. Code Ann. Section 58-23-590(C)(Supp. 2000) states that the Commission shall issue a common carrier certificate of public convenience and necessity if the applicant proves to the Commission that: (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the Commission's regulations and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

Upon consideration of this matter, we find that the applicant, Allegiance Moving Company has failed to demonstrate that it is fit to perform the services sought by the amended application. We also hold that the Company has failed to show that the proposed service is required by the present public convenience and necessity. Accordingly, the application is denied.

The criteria describing the “fit” requirement is found in Commission Regulation 103-133 (1)(a). In part, the regulation states that the applicant “should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agrees to operate in compliance with these statutes and regulations.” Allegiance fails this basic test. The illegal Andrew move, as testified to by witnesses Parker and Andrew, demonstrates either an unfamiliarity with the Commission’s statutes and regulations and/or an unwillingness to operate in compliance with these statutes and regulations. Clearly, S.C. Code Ann. Section 58-23-590 requires that an applicant company receive a certificate from this Commission prior to the Commission regulated movement of household goods. See also Commission Regulation 103-114. Allegiance was either unaware of the requirement or was unwilling to comply with it when it performed the Andrew move. Thus, Allegiance fails one of the basic requirements of fitness, as laid out in Commission Regulation 103-133 (1)(a).

The Company also fails the public convenience and necessity standard. Commission Regulation 103-133(1) requires that the public convenience and necessity criterion be shown by the use of “shipper witnesses.” Commission Order No. 1999-654 waives this requirement for those who wish to transport household goods between points

and places in three or fewer counties in the State, which is the situation seen in the present case. However, that Order also points out that the public convenience and necessity criterion must still be proven through some means before we can grant a Certificate of Public Convenience and Necessity, as per S.C. Code Ann. Section 58-23-590 (Supp. 2000). Regulation 103-133(1) also states that an application for household goods authority may be approved by showing the fit, willing, and able criteria, and “that public convenience and necessity are not already being served in the territory by existing authorized service.”

The evidence relating to the public convenience and necessity in this case consists of Boris’ testimony, an exhibit from the Charleston Regional Development Alliance showing approximately a 5% growth in Charleston for the period 1995-2000, and a Census 2000 exhibit showing an increase in population of 15.1% for South Carolina. Boris concluded from these exhibits that more movers would be required to serve this growth, and therefore requests that we find that the public convenience and necessity requires his proposed service. We think that Boris asks us to jump to a conclusion not indicated by the evidence.

First, although there was evidence related to the growth of Charleston and of South Carolina, there was no specific discussion about Berkeley and Dorchester Counties. Second, mere “growth” does not automatically lead to a conclusion that more movers are required by the public convenience and necessity. Allegiance simply failed to show that the public convenience and necessity was not already being served in the territory by existing authorized service. See Regulation 103-133(1). Further, the

testimony of Anthoney Cook supports the conclusion that existing movers such as his company are able to serve the area in question without the granting of additional authority by this Commission. Cook testified specifically that there was no need for another mover in the Charleston area, and that this point was supported by the fact that his intrastate revenues have decreased in the last year.

Typically in cases where shipper witnesses are involved on the public convenience and necessity criterion, such witnesses testify generally that they attempted to get service from an existing mover and could not procure such service in the area requested for new authority and that they could have used the services of the applicant had it been properly certificated. This is one example of how it can be shown that public convenience and necessity is not already being served in the requested territory by existing authorized service. Although the use of shipper witnesses is waived when a Company requests authority in three or fewer counties, it appears that such witnesses could still be useful in proving the lack of existing authorized service in a requested area in any case.

Allegiance had no comparable testimony in the case at bar. Since the Company has failed to show that the public convenience and necessity was not already being served in the territory by existing authorized service, the Company has failed to show that the proposed service is required by the present public convenience and necessity.

Since the Company has failed to show that it is fit to provide the service, and has failed to show that the proposed service is required by the present public convenience and necessity, the application is denied.

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IT IS THEREFORE ORDERED:

1. That the Application of Phillip E. Boris DBA Allegiance Moving Company for a Class E Certificate of Public Convenience and Necessity is denied.

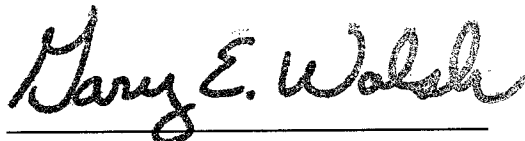
2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)